

State of South Carolina

In The Supreme Court
Appeal From York County
John C. Hayes III, Circuit Court

Princeton Thrower
v. Petitioner

State of South Carolina
Respondent

Appellate Case No. 2014-001005

Pro-se Brief of Petitioner

Dated: Jan, 03, 2015

RECEIVED

JAN 06 2015

S.C. SUPREME COURT

Index

Index	1
Statement of the case	2
Issues Presented	3
Arguments	4-8
Conclusion	9
certificate of service	10

RECEIVED

JAN 06 2015

Statement of the Case

S.C. SUPREME COURT

Petitioner is incarcerated with the South Carolina Dept of correction pursuant to the York County clerk of courts orders of commitment. The Petitioner was indicted by the January 2012 term of the York County Grand Jury for trafficking in Cocaine Base (2012-GS-46-0259). The Petitioner was represented by Hemphill Pride. on September 10, 2012, the petitioner pled guilty to trafficking cocaine Base 3rd offence. The Honorable Edward W. Miller sentenced petitioner to 27 years.

A notice of Appeal was filed on petitioner behalf. The South Carolina Court of appeals dismissed the appeal for failure to provide a sufficient showing for Appeal on May 6, 2013. The remittitur was issued on 4, 2013.

Petitioner filed Application for P.C.R. with the York County clerk of court on March 20, 2013. Petitioner alleged that he is being held in custody unlawfully for the following reasons;

1. Ineffection Assistance of Counsel
2. Violation of Due Process

An hearing was held on April 14, 2014 in the York County court of common Pleas. The honorable John C. Hayes III presided

The application was dismissed by Judge Hayes order on April 15, 2014.

A timely petitioner for writ of certiorari was filed by Benjamin Tripp as well as a Johnson Brief this petitioner follows:

Issues Presented

Did the P.C.R. court err when the court ruled that trial counsel was not ineffective, when trial counsel admitted that he did not do any mitigating investigation?

Did P.C.R. court err when the court ruled that trial counsel was not ineffective when by trial counsel's own admission he did not inform petitioner of the state's plea offer as required by law?

Did P.C.R. court err when the court ruled that trial counsel was not ineffective when by counsel's own admission he allowed petitioner to make a conditional plea?

Argument

1. Did P.C.R. court err when the court ruled that trial counsel was not ineffective, when trial counsel admitted that he did not do any mitigating investigation?

P.C.R. Trans. P. 66. 621 "I had not done any investigation" No where in the post conviction relief hearing does counsel state that he did any kind of investigation into the facts the circumstances or the truth of this case. If fact he admits he relies on a report from the Dept. of Mental Health, report of the York county Solicitor's office and officer at the York county Detention center.

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. See, Bagwell v. State 763 SE2d 630. Counsel has a duty to conduct a reasonable investigation to discover all reasonable available mitigation evidence and all reasonable available evidence tending to rebut any aggravating evidence introduced by the state.

At a minimum counsel has a duty to make an independent investigation of the facts and circumstances of the case. See Walker v. State 756 SE2d 144

Did P.C.R. Court err when the court ruled that trial counsel was not ineffective when by trial counsel's own admission he did not inform Petitioner of the state's Plea offer, as required by law?

The American Bar Association Recommends defense counsel's "Promptly communicate and explain to defendants all plea offers made by the prosecuting attorney" ABA standards for criminal justice, Plea of Guilty and this standard has been adopted by numerous state and federal courts over the last 30 years, see e.g. *Davis v. State* 381 S.C. 601, 675 SE 2d 416 (2009).

Post conviction relief hearing transcript page 66
Line 15-24. Petitioner's trial attorney Hemphill Pride.
Direct by Mr. Johnson, starting at line 15 "I saw her one day and she asked me to come by her office, and I had just started on this case and we sat down and talked, and she said if your client will Plea guilty today I'll give him a (15) fifteen-year sentence. And I explained to her that I was in no position to plea him because I had not even filed for discovery. I had not done any investigation, had not talk to my client was not prepared in any respect, and she said "you know if you don't take it to day, I'm taking it off the table and we are going for the max."

Defense counsel has the duty to communicate formal offers from the state to accept a plea on terms and conditions that may be favorable to the accused. The offer was formal with a fixed expiration date, when counsel allowed offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the constitution requires.

Counsel was summoned to the York County solicitor's office to meet with Ms Rebecca R. Merrey. She offered Petitioner a plea deal of 15 years at that meeting P.C.R. Trans P.66 L. 15-24. The offer was good for that day only. The solicitor's office is in the same York County complex as the County Jail where petitioner was housed at the time.

Counsel could have gone right to the jail and informed the petitioner of the offer and to explain the plea to the petitioner. But counsel made no effort to do his duty and inform his client of the offer. See Bell v. State 76 5 SE 2d 4.

Defendant plead guilty to less favorable terms because counsel ineffectiveness cause him to miss out on a earlier more favorable plea. There is a reasonable probability the state and the court would have accepted the plea. There is also a reasonable probability that the defendant would have accept the plea in light of the intervening circumstances. Under the offer the terms would have been less sever than the sentence that was imposed.

Trial counsel (Mr. Pride) was deficient in his performance when he failed to inform Petitioner of the Plea offer from the state.

Trial counsel failure resulted in Petitioner being prejudiced in that he pled to a more severe sentence, as a result of the loss of the earlier Plea opportunity.

If a plea bargain has been offered a defendant has the right to effective assistance of counsel in considering whether to accept it and if that right is denied, Prejudice can be shown under the Prejudice prong of the Strickland test. The deficiency prong is proven by Counsel failure to inform Petitioner as required by Law.

Did P.C.R. Court. Err when the court ruled that Counsel was not ineffective when by Counsel own admission he allowed Petitioner to make a conditional Plea,

P.C.R. Trans. P. 84, L. 19-25. "And yet Mr. Pride went forward with the Plea And at the time the defendant told the court he did not remember, and the court accepted the Plea that was not an Alford Plea. It was not no contest Plea. It was a guilty plea where he - his testimony is a mens rea, and there was no finding of competency because it was never brought before the court."

There was no factual basis for accepting a plea of guilty from Petitioner as required of the court. Petitioner could not remember the facts so how could he plea guilty. In effect and in law this was a conditional Plea, and trial counsel was ineffective for allowing Petitioner to make this Plea. Conditional Plea which is a practice not recognized in South Carolina and a practice which we expressly disapprove. 343 SE2d 186 A defendant must plea guilty to all the elements of the offense charged.

State of South Carolina
In the Supreme Court
Appeal from York County
John C. Hayes III Circuit Court Judge
Appellate Case No. 2014-001005

Princeton Thrower
Petitioner

Certificate of Service

v.

State of South Carolina
Respondent

Petitioner, Princeton Thrower, declares under the
Penalty of perjury that he mailed a copy of his
Ro-se-Brief to the parties listed below by placing
in the U.S. mail.

J Rutledge Johnson
Asst. Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Respectfully

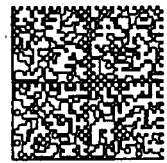
Princeton Thrower
Broad River Comm. Inst
4460 Broad River Rd
Columbia, S.C. 29210

Hon. Daniel E. Shearouse, Clerk
S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Dated: Jan. 03, 2015
cc. file

Princeton Tower
BRC I Murray 121
4460 Broad River Road
Columbia, S.C. 29210

COLUMBIA
SC 290
05 JAN 15
PM 1 L



UNITED STATES POSTAGE
 PINEY BOWES
02 1M \$ 00.90⁰
0008003534 JAN 05 2015
MAILED FROM ZIP CODE 29210

SCNC

JAN 05 2015

MAIL ROOM

RECEIVED

JAN 05 2015

BRCI
MAILROOM

Hon. Daniel E. Shearouse, Clerk
S.C. Supreme Court
P. O. Box 11330
Columbia, S.C. 29210

29211133030